

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4868

IN THE MATTER OF:

Served June 10, 1996

Application of DISTRICT OF)	Case No. AP-96-20
COLUMBIA FAMILY SERVICES, INC.,)	
for a Certificate of Authority)	
-- Irregular Route Operations)	
Investigation of Unauthorized)	Case No. MP-96-17
Operations of DC FAMILY SERVICES)	

The investigation of District of Columbia Family Services, Inc., (respondent or applicant) was initiated on February 26, 1996, in Order No. 4771, on the basis of information received from the District of Columbia Commission on Health Care Finance (CHCF) indicating respondent was transporting passengers for hire in the Metropolitan District. Order No. 4771 directed respondent to show cause in thirty days why a civil forfeiture should not be assessed for operating without a certificate of authority. Respondent filed a response to Order No. 4771 on February 28, 1996, and an application for a certificate of authority on April 5, 1996.

I. The Investigation

Respondent operates fourteen group homes in the District of Columbia pursuant to contracts with the DC Department of Human Services (DHS). The contracts are administered by CHCF and identify the homes as "intermediate care facilities" (ICFs). A separate contract has been executed for each ICF, but the substantive terms of each are identical. We recently held that transportation performed under such contracts constitutes transportation for hire within the meaning of the Compact.¹

Consistent with the VOCA decision, we find that respondent's transportation under the ICF Agreements with DHS, although subject to our jurisdiction, does not rise to the level of willful violation of the Compact. The term "willfully" means purposely or obstinately, with intentional disregard or plain indifference.² Given the state of our decisions in this area prior to the VOCA decision, we cannot characterize respondent's actions as obstinate or intentional. Consequently, there is no basis for assessing a civil forfeiture.

¹ In re VOCA Corp. of Wash., D.C., No. AP-96-14, Order No. 4851 (May 21, 1996).

² Id.

II. The Application

The application was accepted for filing April 12, 1996. Applicant, a District of Columbia corporation, seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

Notice of the application was served on April 17, 1996, in Order No. 4816, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication. Applicant complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record.

Applicant proposes commencing operations with thirteen vans. Applicant proposes a contract tariff for transportation under the DC Medicaid program.

Applicant filed a balance sheet as of December 31, 1995, showing assets of \$1,726,863; liabilities of \$2,139,615; and negative equity of \$412,752. Applicant's projected operating statement for 1996 shows revenue of \$7,405,800, expenses of \$7,391,491; and net income of \$14,309.

Applicant certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire. Applicant further certifies that neither applicant nor any person controlling, controlled by, or under common control with applicant has any control relationship with a carrier other than applicant.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

- (i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
- (ii) that the transportation is consistent with the public interest.

Applicant must show the present ability to sustain operations during the first year under WMATC authority.³ Applicant's liabilities exceed its assets, but applicant is projecting net income for 1996, and applicant is an ongoing operation. We therefore make a provisional finding of financial fitness, subject to the condition that applicant keep its insurance current. If during the first year of WMATC operations applicant's certificate of insurance expires or is cancelled without timely replacement, applicant's certificate will be subject to revocation on thirty days' notice.

Based on the evidence in this record, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That District of Columbia Family Services, Inc., 1400 Spring Street, Suite 300, Silver Spring, MD 20910, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

2. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 345 is hereby assigned.

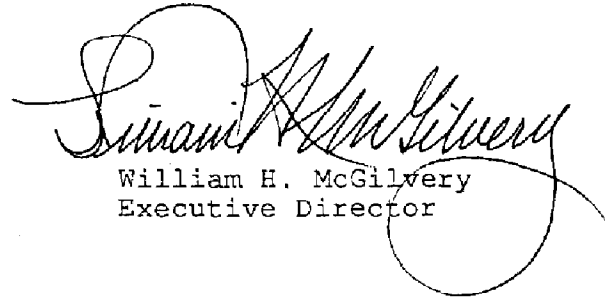
3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 345 shall be issued to applicant.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

³ In re We Care Project, Inc., AP-95-45, Order No. 4703 (Nov. 27, 1995).

5. That unless applicant complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:



William H. McGilvery
Executive Director